Attorney Docket No. YORK.US.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: David G. Koch, et al.	]	
Serial No.: 10/710,845	]	
Confirmation No.: 3581	]	Examiner: Bartosik, Anthony N.
Filed: 08/06/2004	]	
For: COMBINATION FLASHING AND	]	
DRAINAGE SYSTEM,	]	Group Art Unit: 3635

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Commissioner for Patents

P.O. Box 1450

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APPEAL BRIEF

37 CFR §41.37

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C. Real Party in Interest.

The real party in interest is the assignee of this application, York Manufacturing, Inc.

D. Related Appeals and Interferences.

None.

E. Status of Claims.

Claims 1 – 10 and 17 - 27 are pending and have been finally rejected. Claims 11 – 16 have been canceled. The rejection of claims 1 – 10 and 17 – 27 are the subject of this appeal.

F. Status of Amendments.

No amendments have been filed subsequent to final rejection. No amendments are filed herewith.

G. Summary of Claimed Subject Matter.

The paragraph numbers below refer to the U.S. Pat. App. Pub. No. 2005/0028455A1.

Claim 1: A combination through-wall masonry flashing / drainage device (10) (para. 0014) comprising

a flashing membrane (12) (para. 0014), the flashing membrane having a first side and a second side opposite the first side,

a reinforcing cloth (14) (para. 0015) adhered to the flashing membrane first side, and

a wicking cloth (50) (para. 0017) adhered to the flashing membrane second side.

Claim 17: A combination through-wall masonry flashing / drainage device (10) (para. 0014) comprising:

a flashing membrane (12) (para. 0014), the flashing membrane having a first side and a second side opposite the first side,

a first reinforcing cloth (14) (para. 0015) adhered to the flashing membrane first side,

a second reinforcing cloth (17) (para. 0016) adhered to the flashing membrane second side, and

a wicking cloth (50) (para. 0017) adhered to the second reinforcing cloth, wherein the wicking cloth material is selected from the group consisting of polyester, polypropylene, polypropylene nylon, and polyethylene (50) (para. 0017).

Claim 21: A system for removing water from between an inner wall and an outer wall (para. 0021) comprising

an inner wall (46),

an outer wall (34), and

a combination through-wall masonry flashing and drainage device (10), the device comprising a flashing membrane (12) (para. 0014) having a first side and a second side opposite the first side, a reinforcing cloth (14) (para. 0015) adhered to the flashing membrane first side, and a wicking cloth (50) (para. 0017) adhered to the flashing membrane second side; the device having a first edge and a second edge opposite the first edge, wherein the first edge of the device is secured to the inner wall (46) with the wicking cloth facing up, and the second edge of the device is secured beyond the outer wall (34), such that water between the inner wall and outer

wall is drawn through a mortar joint (42) at the base of the outer wall (34) to the outside of the outer wall by the wicking action of the wicking cloth without the need for vents (para. 0021).

Claim 24: A system for removing water from between an inner wall and an outer wall (para. 0021) comprising

an inner wall (46),

an outer wall (34), and

a combination through-wall masonry flashing and drainage device (10), the device comprising a flashing membrane (12) (para. 0014) having a first side and a second side opposite the first side, a first reinforcing cloth (14) (para. 0015) adhered to the flashing membrane first side, a second reinforcing cloth (17) (para. 0016) adhered to the flashing membrane second side, and a wicking cloth (50) (para. 0017) adhered to the second reinforcing cloth; the device having a first edge and a second edge opposite the first edge, wherein the first edge of the device is secured to the inner wall (46) with the wicking cloth facing up, and the second edge of the device is secured beyond the outer wall (34), such that water between the inner wall and outer wall is drawn through a mortar joint (42) at the base of the outer wall to the outside of the outer wall (34) by the wicking action of the wicking cloth without the need for vents (para. 0021).

H. Grounds of Rejection to be Reviewed on Appeal.

1. Whether claims 1 – 10 and 17 – 27 are unpatentable under 35 U.S.C. 103(a) over York Flashing in view of Ruiz.

2. Whether claims 21 – 24 are unpatentable under 35 U.S.C. 103(a) over Sourlis in view of York Flashing and Ruiz.

3. Whether claims 25 – 27 are unpatentable under 35 USC 103(a) over York Flashing and Ruiz as applied to claim 1, and further in view of Collins.

4. Whether the Office is estopped from further rejecting 1 – 10 and 17 – 27 after multiple substantive examinations under collateral estoppel or equitable estoppel in view of 37 CFR 1.104(b).

I. Argument.

1. Rejection under 35 U.S.C. 103(a) over York Flashing in view of Ruiz.

Claims 1 – 10 and 17 – 27.

The Applicants respectfully submit that the Office has not made out a prima facie case of obviousness for this ground of rejection. Turning first to claim 1, the Office asserts that it would have been obvious to one skilled in the art at the time of the invention to include a wicking layer as taught by Ruiz to the top of York Flashing as a "combination of prior elements according to known methods to yield predictable results." Under the Office's own Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex, Inc., the Office must articulate the following for this rationale:

a. A finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;

b. A finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function it did separately;

c. A finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and

d. Whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

In this case the Office has only stated its legal conclusion without performing the indicated analysis. Therefore, the Office has not made a prima facie case of obviousness with respect to claim 1.

In addition, the Office has not given sufficient weight to the five declarations traversing rejection under §132 submitted in the Applicants' first response submitted 2/19/2008. "Expressions of disbelief by experts constitute strong evidence of nonobviousness." Environmental Designs, Ltd. v. Union Oil Co. of Cal., 713 F.2d 693, 698, 218 USPQ 865, 869 (Fed. Cir. 1983) (citing United States v. Adams, 383 U.S. 39, 52, 148 USPQ 479, 483-484 (1966)). Testimony that the invention met with initial incredulity and skepticism of experts was sufficient to rebut the prima facie case of obviousness based on the prior art. Burlington Industries Inc. v. Quigg, 822 F.2d 1581, 3 USPQ2d 1436 (Fed. Cir. 1987). MPEP 716.05.

The Applicants submitted five declarations of experts citing initial skepticism in the efficacy of the present invention on 2/19/2008. The first declaration was by Lincourt, one of the inventors. Lincourt attests to the skepticism of Lolley in the publication The Construction Specifier, and the successful rebuttal by co-inventor Koch. The relevant pages of that publication are attached. Lincourt also attests to the skepticism of expert Lundsford in the attached letter.

The other four declarations are by independent experts who have no interest in the present patent application or its assignee. They are Michael Mahoney, William A. Sneed, Jr., David Spino, and Derek Tresnak. Accordingly, their testimony should be given great weight as secondary considerations of non-obviousness. Independent claim 1 should be allowable if the declarations traversing rejection are given appropriate weight.

Regarding claims 2, 4, and 8 – 10, the Office does not offer any rationale for finding the claims obviousness. For the reasons cited above, the Applicants respectfully suggest that the Office has not made out a prima facie case of obvious for these claims. Since claims 2, 4, and 8 – 10 depend from claim 1, they must add limitations or elements not found in claim 1. Therefore, if claim 1 is allowable, then claims 2, 4, and 8 – 10 must also be allowable.

Regarding the rejection of claims 3, 5, 6, and 7, they also depend from claim 1. Therefore, if claim 1 is allowable, then claims 3, 5, 6 and 7 must also be allowable.

For independent claim 17 the Office asserts that it would have been obvious to one skilled in the art at the time of the invention to include a wicking layer as taught by Ruiz to the top of York Flashing as a "combination of prior elements according to known methods to yield predictable results," which is the same rationale asserted for claim 1. The Applicants assert that the Office has not made out a prima facie case of obviousness for the same reasons argued above, and furthermore asserts its patentability based on the secondary considerations of declarations traversing rejection.

Regarding claims 18 - 20, the Office does not offer any rationale for finding the claims obviousness. For the reasons cited above, the Applicants respectfully suggest that the Office has not made out a prima facie case of obvious for these claims. Since claims 18 - 20 depend from claim 17, they must add limitations or elements not found in claim 17. Therefore, if claim 17 is allowable, then claims 18 – 20 must also be allowable.

The Applicants also note that the York Flashing reference was produced by inventive entity that is the real party in interest. It is well settled that the inventor's own explanation should not be used in rendering its claims obvious.

2. Rejection under 35 U.S.C. 103(a) over Sourlis in view of York Flashing and Ruiz.

Claims 21 – 24.

For independent claim 21, the Office asserts that it would have been obvious to one skilled in the art at the time of the invention to include the prior art elements of Sourlis, York Flashing and Ruiz "according to known methods to yield predictable results," which is a very similar rationale asserted for claims 1 and 17. The Applicants assert that the Office has not made out a prima facie case of obviousness for the same reasons argued above, and furthermore asserts its patentability based on the secondary considerations of declarations traversing rejection. The Applicants also note that the York Flashing reference was produced by inventive entity that is the real party in interest. It is well settled that the inventor's own explanation should not be used in rendering its claims obvious.

Claims 22 – 24 depend from claim 21 so they must add limitations or elements not found in claim 21. Therefore, if claim 21 is allowable, then claims 21 – 24 must also be allowable.

3. Rejection under 35 U.S.C. 103(a) over York Flashing and Ruiz as applied to claim 1, in further view of Collins.

Claims 25 – 27.

The Office asserts that it would have been obvious to one having skill in the art at the time of the invention to replace the material of the combination with one of the claimed materials as a "simple substitution of one known element for another to yield predicable results." Under the Office's own Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex, Inc., the Office must articulate the following for this rationale:

a. A finding that the prior art contained a device (method, product, etc.) that differed from the claimed device by the substitution of some components (steps, elements, etc.) with other components;

b. A finding that the substituted components and their functions were known in the art;

c. A finding that one of ordinary skill in the art could have substituted one known element for another, and the results of the substitution would have been predictable; and

d. Whatever additional findings based on the Graham factual inquired may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

In this case the Office has only stated its legal conclusion without performing the indicated analysis. Therefore, the Office has not made a prima facie case of obviousness with respect to claims 25 - 27.

Furthermore, the Applicants respectfully suggest that the Office has not given sufficient weight to the five declarations traversing rejection mentioned above. For these reasons, the Applicants suggest that claims 25 – 27 are allowable. The Applicants also note that the York Flashing reference was produced by inventive entity that is the real party in interest. It is well settled that the inventor's own explanation should not be used in rendering its claims obvious.

4. Whether the Office is estopped from further rejecting claims 1 – 10 and 17 – 27 after multiple substantive examinations under collateral estoppel or equitable estoppel in view of 37 CFR 1.104(b).

"On taking up an application for examination or a patent in a reexamination proceeding, the examiner ***shall*** make ***a*** thorough study thereof and ***shall*** make ***a*** thorough investigation of the available prior art relating to the subject matter of the claimed invention." 37 CFR 1.104(a)(1). "The examiner's action ***will be complete as to all matters***..." 37 CFR 1.104(b). (Emphasis added.) The text of the rules require the interpretation that there shall be one and only one search and substantive examiner's action.

In this case, the present application has been subject to substantive examination ***five*** times. The Office communications were transmitted on 10/19/2007, 8/7/2008, 2/5/2009, 12/10/2009, and 4/8/2010. The Applicants have not amended the independent claims in any material way that would necessitate additional searching and examination. However, each time the Applicants have successfully rebutted the Office's rejections, the Office has sua sponte performed an additional search and examination.

In the past the Board has not ruled on arguments based on Rule 104 on the ground that it is petitionable subject matter that should go to the Director instead. The Applicants respectfully disagree, and suggest that the Board can and should invoke equitable remedies in this case.

The Applicants respectfully suggest that the Office has not complied with Rule 104. Even if there is justification for the Office performing more than one search and examination, the Applicants assert that five is too many. Rule 104 does not provide any remedies to the class it is

intended to protect. Therefore, the Applicants ask the Board to invoke its equitable powers to fashion a just remedy.

In this case, the Applicants suggest that *collateral estoppel* applies. Each substantive Office action on the merits is an adjucation that in fact involves notice and a hearing. In each successive Office action the facts and claims remain the same, but the Office makes yet another argument to defeat the Applicant's claims. The Applicants are forced to argue different positions in each response. The Applicants are disadvantaged because prosecution history estoppel applies with every response. It should also apply to the Office. If rejections have been successfully rebutted, the claims should be allowable.

The Applicants also suggest that *equitable estoppel* applies. The Applicants have taken legal positions in reliance on the Office's ruling on patentability. Repeatedly changing the grounds for rejection puts the Applicants at a disadvantage. A just remedy in this case would be to estop the Office from rejecting the claims and allowing claims 1 – 10 and 17 – 27.

In conclusion, the Applicants point out that to be allowable, claims must be patentable by only a preponderance of the evidence. The Applicants have:

1. successfully rebutted the Office's rejections several times over;

2. submitted five declarations traversing rejection; and

3. invoked the Board's equitable powers to fashion a just remedy for the Office's non-observance of Rule 104.

For these reasons, the Applicants respectfully request that their claims be allowed.

Respectfully submitted,

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Date: June 8, 2010

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J. Claims Appendix.

1. A combination through-wall masonry flashing / drainage device comprising

a flashing membrane, the flashing membrane having a first side and a second side opposite the first side,

a reinforcing cloth adhered to the flashing membrane first side, and

a wicking cloth adhered to the flashing membrane second side.

2. The device of claim 1, wherein the flashing membrane is a sheet of copper material.

3. The device of claim 1, wherein the flashing membrane is made of copper sheet weighing between three and seven ounces per square foot and is between 0.0036 and 0.0094 inches thick.

4. The device of claim 1, wherein the reinforcing cloth is fiberglass.

5. The device of claim 4, wherein the reinforcing cloth weighs between 0.2 and 0.3 ounces per square foot.

6. The device of claim 1, wherein the wicking cloth is made of a synthetic fiber material selected for maximum wicking ability, life expectancy, mildew resistance, and strength characteristics, is about 0.050 inches thick, and weighs between five and seven ounces per square yard.

7. The device of claim 1, wherein the wicking cloth material is one taken from the group consisting of polyester, polypropylene, polypropylene nylon, and polyethylene.

8. The device of claim 1, wherein the wicking cloth transports liquid by capillary action or fiber tow infiltration.

9. The device of claim 8, wherein the wicking cloth transports liquid by both capillary action and gravity.

10. The device of claim 1 further comprising an adhesive disposed between the reinforcing cloth and the flashing membrane, and between the wicking cloth and the flashing membrane.

11 – 16 (canceled)

17. A combination through-wall masonry flashing / drainage device comprising:

a flashing membrane, the flashing membrane having a first side and a second side opposite the first side,

a first reinforcing cloth adhered to the flashing membrane first side,

a second reinforcing cloth adhered to the flashing membrane second side, and

a wicking cloth adhered to the second reinforcing cloth, wherein the wicking cloth material is selected from the group consisting of polyester, polypropylene, polypropylene nylon, and polyethylene.

18. The device of claim 17, wherein the wicking cloth transports liquid by capillary action or fiber tow infiltration.

19. The device of claim 18, wherein the wicking cloth also transports liquid by gravity.

20. The device of claim 17 further comprising an adhesive disposed between the reinforcing cloths and the flashing membrane, and between the wicking cloth and the second reinforcing cloth.

21. A system for removing water from between an inner wall and an outer wall comprising

an inner wall,

an outer wall, and

a combination through-wall masonry flashing and drainage device, the device comprising a flashing membrane having a first side and a second side opposite the first side, a reinforcing cloth adhered to the flashing membrane first side, and a wicking cloth adhered to the flashing membrane second side; the device having a first edge and a second edge opposite the first edge, wherein the first edge of the device is secured to the inner wall with the wicking cloth facing up, and the second edge of the device is secured beyond the outer wall, such that water between the inner wall and outer wall is drawn through a mortar joint at the base of the outer wall to the outside of the outer wall by the wicking action of the wicking cloth without the need for vents.

22. The system of claim 21, wherein the first edge is secured at a higher elevation on the inner wall than the second edge is secured to the outer wall.

23. The system of claim 21, further comprising a horizontal concrete support upon which the inner wall and outer wall are supported, wherein the device second edge is disposed between and beyond the outer wall and concrete support.

24. A system for removing water from between an inner wall and an outer wall comprising

an inner wall,

an outer wall, and

a combination through-wall masonry flashing and drainage device, the device comprising a flashing membrane having a first side and a second side opposite the first side, a first reinforcing cloth adhered to the flashing membrane first side, a second reinforcing cloth adhered to the flashing membrane second side, and a wicking cloth adhered to the second reinforcing cloth; the device having a first edge and a second edge opposite the first edge, wherein the first edge of the device is secured to the inner wall with the wicking cloth facing up, and the second edge of the device is secured beyond the outer wall, such that water between the inner wall and outer wall is drawn through a mortar joint at the base of the outer wall to the outside of the outer wall by the wicking action of the wicking cloth without the need for vents.

25. The device of claim 1, wherein the flashing membrane is a sheet of PVC material.

26. The device of claim 1, wherein the flashing membrane is a sheet of polyethylene material.

27. The device of claim 1, wherein the flashing membrane is a sheet of stainless steel material.

K. Evidence Appendix.

Five declarations traversing rejection are submitted herewith. They were submitted with the response dated 2/19/2008.

L. Related Proceedings Appendix.

None.

burn and melt at a very low temperature, but does not burn as readily as acrylic.

The tests measure reaction to materials under limited conditions and are designed to show comparisons. The UL test labs qualify their procedures in this way:

1.2 The purpose of the test is to determine the comparative burning characteristics of the material under test by evaluating the spread of flame over its surface and the density of the smoke developed when exposed to a test fire, and thus to establish a basis on which surface burning characteristics of different materials are compared, without specific regard to all the end-use parameters that affect the surface burning characteristics.

There is a new method called the 'corner burn test' (National Fire Protection Association [NFPA] 286, *Methods for Fire Tests for Evaluating Contribution of Wall and Ceiling Interior Finish to Room Fire Growth*) that better analyzes the behavior of plastics in an actual room setting. This test may be substituted for the ASTM E 84 test in some areas. The designer should think through the material choices, knowing how his or her selection will react. Indeed, concrete would be a great choice if fire was your only concern, but then again, there are earthquakes...

Mary Boone Wellington
MB Wellington Studio

Cavity walls and moisture management

I recently read "Checkup on Cavity Walls" by David Koch (*CS* November 2005), which deals with the concerns of moisture migration in a cavity wall. I was pleased he mentioned proper flashing materials should be used, and also discussed the concerns that develop when polyvinyl chloride (PVC) and rubberized asphalt flashings malfunction over time. I agree that proper flashing design in masonry construction is often overlooked—true quality flashing products amount to a small part of the total construction cost, but their absence can be extremely costly when moisture problems develop.

Koch goes on to promote the use of a wicking copper flashing, and states this product outperforms the existing laminated copper flashings on the market. He says this new product eliminates the need for mortar deflection components presently being used to suspend mortar away from the weep vents. He claims this thin fabric drains moisture from the cavity, but neglects to inform us of his real interest in this product. The fact is Koch is the inventor of this new product, and holds a patent pending status at this time. Given his involvement with this new product, I would hardly consider his editorial to be unbiased.

Mortar deflection products have enjoyed an outstanding performance record over the years. Asphalt-laminated copper flashings have been installed in thousands of masonry structures over the past 80 years, with great results. It has been my experience, of more than 35 years, that wicking materials clog over time once saturated with the salts, acid, and lime present in fresh mortar mix. This, along with the weight of tons of masonry on a thin wicking fabric, means I must question its continuous wicking performance. Through-wall flashing is not easily replaced. The Brick Institute of America (BIA) recommends flashing should perform for the life of the wall. We consider the life of masonry to approach 100 years—a century is a lot of wicking.

Before advocating the replacement of tried and true products, I recommend Koch offer a guarantee his new invention performs for the life of the wall.

Richard A. Lolley
Advanced Building Products

As a professional member of the Construction Specifications Institute (CSI) since 1979, and as a certified construction specifier (CCS) since 1982, I have witnessed many changes and advancements in my more than 44 years in the architectural industry. New products have come and gone, new codes have replaced the old, and through it all, the industry has continued to reinvent itself, finding better and more creative ways to approach building construction. During these many changes I have remained true to the process, and committed in my role as a consultant on these important issues.

Like Lolley, I have been a proponent of laminated copper flashing when it comes to protecting cavity walls from moisture, but I view this industry through a wider

Letters

lens. As a regular editorial contributor to various publications and in my role as president of a specifications and consulting firm, I must always be abreast of the very latest advancements.

The article in question was not intended to deny effectiveness of mortar deflection devices, but rather to increase awareness concerning changes that alter the process of cavity wall construction. The shifting and updating of seismic zones and hurricane wind loads in the *International Building Code* (*IBC*) is requiring engineers, architects, and contractors to change the measurements and spacing of masonry reinforcement. The majority of mortar deflection devices are too tall and interfere with steel stud and veneer wall ties or ties that must be placed in the first mortar joint of concrete masonry unit (CMU) backup walls, thereby complicating the installation process concurrent with flashing that cannot be penetrated with reinforcing ties.

As for wicking/drainage systems, this concept is far from new—these systems have been used for more than 50 years in the form of rope wicks. However, there is indeed a new component—the flashing/drainage systems that increase the wicking area exponentially by covering the entire flashing membrane surface with wicking material, producing more than ample hourly drainage rates of 9.5 L (2.5 gal) per 3.1 m (10 ft) of wall section. The issue of compression loading of these new wicking/drainage systems has also been tested. The total weight of a 3.1-m tall section of brick fascia only delivers a 103-kPa (15-psi) load to the flashing membrane and the flashing/drainage systems have been tested to 1034 kPa (150 psi) with minimal impact on drainage rates.

On another note, while I'm very proud to be listed as one of the three inventors on a published pending patent for a flashing/drainage system employing the technology described (which does come with a written 'life of the wall' warranty, incidentally), I have no ownership rights on this patent.

The construction industry and the rules and regulations that surround it will forever be changing and evolving as evidenced in the CSI slogan—"Advancement in Construction Technology." I feel a strong obligation to the readership of this publication to always be informed.

David G. Koch CCS, CSI
ASAC Consultants

Debating fenestration and certification

In "Evolution in Fenestration Energy Ratings" by Jim Benney (*CS* November 2005), the executive director of the National Fenestration Rating Council (NFRC) outlined the nonresidential, whole-product fenestration rating program his organization has proposed to help design professionals accurately calculate energy performance.

While a basic energy calculation could prove useful for design professionals and stakeholders, Benney fails to explain the heavy operational and financial burden the NFRC-proposed system would place on the architectural, engineering, and design communities.

The key component to the proposed program is a simulation tool that integrates NFRC's pre-approved individual components (*i.e.* glazing, spacer, and frame) to calculate a whole system energy rating. This would be a tremendous building tool for all stakeholders and, as a software program, it would be efficient and cost-effective to use.

However, beyond this component modeling program, NFRC is proposing the final calculation and whole product be further validated and 'certified'—possibly on-site—by for-profit, NFRC-licensed third parties. Further validation and certification are entirely unnecessary steps that only increase the program's costs (which will be borne by the engineer or designer, and ultimately be passed on to the building owner).

Unnecessary validation and certification not only increase total building cost, but the extra steps also put significant operational burden on the responsible party. The proposed program currently assigns the weight of "responsibility party" upon the "design professional" or "specifying authority."

While validation and certification may be necessary in residential construction, they are not needed in the commercial industry, where compliance and installation of specified products are successfully governed by well-established and standardized contracts. These documents create sufficient legal proof the fenestration specified is the fenestration installed without the redundancy and added costs of third-party verification.

Upon initially proposing its nonresidential program, NFRC handed the proposal to a task group, which now comprises more than 50 various stakeholders. The task

Exhibit 2 to Joseph Lincourt Declaration

FLASH-VENT PROJECTS

3 ounce Flash vent
Project: Rhode Island Youth Assessment/Development Training Facility
Owner: Rhode Island State Purchasing
Architect: Ricci Greene Associates
Phone# (212)563-9154
Mason: MF Construction

3 ounce Flash Vent
Project: Warwick Fire Dept. Headquarters
Owner: City of Warwick Div. of Purchasing
Architect: Cole & Russell Architects, Inc
Phone# (513)721-8080
Construction Manager: H V Collins Co.

3 Ounce Flash Vent
Project: Ponaganset High School
Owner: Foster-Glocester Reg. School Dist.
Architect: Aharonian Associates
Phone# (401)333-5010
Construction Manager: H V Collins Co.

5 ounce Flash Vent
Project: Traffic Tribunal Court House
Owner: Department of Administration
Architect: Edward Rose Architects, Inc.
Phone# (401)331-9200

Owner: Aurora School Dist # 129, Aurora, IL.
Project: Herget Middle School
G.C.: R.C. Wegman
Mason: Cyberdyne Masonry
Architect: Clark Assoc.

Project: Riverpark, Portland, OR
Mason: Bordak Brothers
G.C.: Porter Construction
Architect: Exterior Research and Design

Project: MUSC Pediatrics
Charleston, SC
Mason: Western Waterproofing
G.C.: Chastain Construction
Architect: Stubbs, Muldrow and Herin Arch.

Project: First Savings Bank of Granbury Texas
Architect: Gaffin and Assoc.

High Mark Data Center
Harrisburg, PA
Architect: RTKL- - Baltimore, MD.

Cristalla Condominiums
Seattle,WA
Arch: Exterior Research and Design
G.C.: North Shore Sheet Metal

NRG Building Services
Hagerstown, MD
Private residence

Woodlawn Elementary School
San Antonio, TX
DeMunbrun / Scarnito Architects

Buffalo Grove Bank and Trust
Buffalo Grove, IL
Geudtner and Melichar Architects

Waynesbury College
New Residence Hall
Waynesbury, PA

Del Mar College
Corpus Christi, TX
Architects:
Richter & Assoc
Bartlett/Cocke G.C.

Belk Hall
UNCW
Wilmington, NC

Hilton Gardens
Atlanta, GA

Goodall Hospital Medical Office Building
Sanford, ME
Sheridan Corp.

Santa Rosa Jr. College Library
Santa Rosa, CA
TLCD Architecture
White Construction

Walzem Elem. School
San Antonio, TX
DeMundron/ Scarnato Architects

Stark State College
Stark County
Canton, OH

Morman Residence
San Antonio, TX
G.C.: Alpha Insulation

Beta House Fraternity
Spring Mills, PA
Mason: Greenland + Son Masonry

Wil Research Laboratory
South addition
Ashland, OH
Mason: DC Meyer Masonry

BILL LUNSFORD

125 ROYAL OAK DRIVE
ALEDO, TEXAS 76008
817-300-7242
WALunsford@aol.com

- SPECIFIED
- MATERIALS
- MARKETING

ROY: TAKE A LOOK AT THIS. DAVE WATTS HERVE SOLVAMET 210-223-5992

August 14, 2006

Mr. Bob Ogorzaly
O'Connell Robertson & Assoc.
811 Barton Springs Road
Suite 900
Austin, Texas 78704

Dear Bob,
As part of my usual process of reviewing projects in my territory for Mortar Net, I couldn't help noticing that your specifications for the Texas State University Pecos building include a product called "Flash-Vent", by York Manufacturing. Your purpose, of course, is to guard against moisture damage arising within the masonry.

Since Flash Vent isn't specified very often, we don't consider it any threat to our company's leadership position in the industry. However, we thought you'd appreciate knowing what we discovered when we examined it:

The absorbent fabric attached to the flashing does indeed "wick moisture", just as the company's advertising States.

Unfortunately, though, it wicks moisture deep INTO the building…and in sizeable quantities.

The enclosed CD demonstrates this "wicking-in" rather vividly. You'll see that when the exterior moisture is introduced, it moves rapidly into the wall cavity. (You'll also note that our test delivered less moisture, and for a shorter duration than, say, one heavy rainstorm.)

We hope you find this data useful. Our mission is to help architects get the best moisture control available. As you may know, Mortar Net's patented drainage systems provide state-of-the-art effectiveness and dependability. Many architects have found that there is no "or equal" for Mortar Net systems.

We'd welcome the chance to discuss this further with you or your colleagues. In fact, Mortar Net offers a Lunch n Learn on Masonry Moisture Management. We'd be happy to present it to your firm if you'd like. Just call me or drop me an e-mail.

Very best wishes,

Bill Lunsford

Bill Lunsford

P.S. If you can't view the CD right now? Simply immerse one end of the Flash Vent material (enclosed) in a cup of coffee. Watch the coffee wick-uphill-into the strip.

TO: Joe Lincourt 8/16/06

Attorney's Docket No. YORK.US.2 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Koch, et al.	]
Serial No.: 10/710,845	] **Examiner: Anthony N. Bartosik**
Confirmation No.: 4844	]
Filed: 08/06/2004	] Group Art Unit: 3635
For: COMBINATION FLASHING AND DRAINAGE SYSTEM	]

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION TRAVERSING REJECTION
37 CFR 1.132

To the Commissioner for Patents:

I, Michael Mahoney, being duly sworn, declare as follows:

1. That I am a OWNER (position) with Seacoast Masonry Supply, having a place of business at 60 Minnesota Avenue, Warwick, RI 02888.

2 That I am considered, and also consider myself to be, an expert in most aspects of the masonry business for the past ten years of my almost 25 years in the business. I have worked with architects throughout New England writing specifications for various products that I have represented. Beyond selling the products that I represent, I also stay on top of industry trends and changes and keep my customers advised. Typically,

after reviewing their specifications and plan details free of charge, I am asked to advise where to improve or make changes to ensure a quality masonry product. I have a long list of architects, general contractors, mason contractors, and manufecturers throughout the country that call to ask my opinion on a daily basis. I am also usually one of the first people called when something goes wrong.

3. That the Brick Industry Association ("BIA"), National Concrete Masonry Association ("NCMA"), International Masonry Institute ("IMI"), and others are associations that are constantly striving to improve the performance and durability of masonry construction. Thanks to these organizations, I have seen a lot of changes for the better in masonry, especially masonry veneer constructions over the last 25 years. Over the same amount of time I have also seen a lot of new products come onto the market. In my opinion, most have been flowed, some have been good, and only a few have been great.

4. That I am familiar with the claimed invention, namely, a combination through-wall masonry flashing / drainage device comprising a flashing membrane, the flashing membrane having a first side and a second side opposite the first side; a reinforcing cloth adhered to the flashing membrane first side; and a wicking cloth adhered to the flashing membrane second side, hereinafter referred to as FLASHVENT.

5. That FLASHVENT has to be the greatest invention that has come onto the market. With copper prices tripling in the past five years alone, flexible copper fabric flashing which used to be the standard less then ten years ago was all but nonexistent

due to cost and competitive flashing products coming on the market. Copper fabric is the only flexible flashing that has withstood the test of time.

6. That roughly 15 years ago, rubberized asphalt (peel and stick) flashings came onto the market as a lesser expensive alternative to copper. After countless failures and revisions to installation instructions over the years to follow, it was found that this type of flashing has some severe limitations. These limitations led to other products including mortar deflection devices ("MDD") coming onto the market to address the inability to support and drip-edge to mask the temperature sensitivity of this type of flashing. Now requiring these additional products for a "proper installation," this type of flashing has become a very expensive "system" which still has unaddressed limitations.

7. That the invention of FLASHVENT accomplished several things. First, due to the non-woven wicking material being laminated to the flashing, it eliminates the need for any MDD. This allows any mortar droppings to fall to the base of the wall where they belong instead of causing potential dams at the top termination of the flashing, as is the case 90% of the time with MDDs. Second, it made copper once again a very competitively priced through-wall flashing. Coppers' resistance to UV light, heat, cold, acids, and alkalis, as well as its ability to support itself and span any gaps or voids makes copper the perfect choice for through-wall flashing. Its manufacturer's warranty speaks for itself. Finally, the labor savings is significant. A single sheet of flashing which replaces and eliminates the need to install multiple components saves time and money for the installer.

8. That I do not have any financial interest in this patent application or in its assignee York Manufacturing, Inc., except as a paying customer.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Michael Mahoney

Date: February 14, 2008

Attorney's Docket No. YORK.US.2 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Koch, et al.	]
Serial No.:	10/710,845	] Examiner: Anthony N. Bartosik
Confirmation No.:	4844	]
Filed:	08/06/2004	] Group Art Unit: 3635
For:	COMBINATION FLASHING AND DRAINAGE SYSTEM	]

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION TRAVERSING REJECTION
37 CFR 1.132

To the Commissioner for Patents:

I, ~~Andrew~~ William A. Sneed, Jr., being duly sworn, declare as follows:

1. That I am the Chief Operating Officer of Wasco, Inc., a masonry contracting firm that has been in business since 1966, has more than 400 employees, and has a place of business at 1138 2nd Avenue North, Nashville, TN 37208.

2. That I have been in the business of masonry contracting for 30 years, and my education, training, and experience in masonry consists of Associate Civil Engineer & Journeyman Brick Mason & State Certified Masonry Inspector.

3. That, on account of my position, education, and experience, I consider myself to be an expert in the field of masonry flashing.

4. That I am familiar with the claimed invention, namely, a combination through-wall masonry flashing / drainage device comprising a flashing membrane, the flashing membrane having a first side and a second side opposite the first side; a reinforcing cloth adhered to the flashing membrane first side; and a wicking cloth adhered to the flashing membrane second side, hereinafter referred to as FLASHVENT™.

5. That upon learning about FLASHVENT I was skeptical that it would work as claimed.

6. That we tested FLASHVENT by building a sample test panel and purposefully introduced excessive mortar droppings, and emptying five gallons of water into the cavity between the concrete and masonry walls.

7. That we were amazed at how rapidly all the water wicked out of the wall, proving that the invention works as claimed.

8. That the test panel wall is more than 18 months old and performs better today than the day we built it.

9. That we are excited about this product and intend to use it in place of the three or four component system that is prevalent in the field now.

10. That FLASHVENT is definitely one of the most innovative flashing products I have seen in the last 20 years.

11. That I have no financial interest in this patent application or in the assignee York Manufacturing except as a paying customer.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

William A. Sheed , Jr.

Date: February 12, 2008

Attorney's Docket No. YORK.US.2 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Koch, et al.	]
Serial No.:	10/710,845	] Examiner: Anthony N. Bartosik
Confirmation No.:	4844	]
Filed:	08/06/2004	] Group Art Unit: 3635
For:	COMBINATION FLASHING AND DRAINAGE SYSTEM	]

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION TRAVERSING REJECTION
37 CFR 1.132

To the Commissioner for Patents:

I, David Spino, being duly sworn, declare as follows:

1. That I am the Vice President of Spino Brothers, Inc., a masonry contracting firm having a place of business at 356 George Washington Highway, Smithfield, RI 02917.

2. That I have been in the business of masonry contracting for 23 years.

3. That, on account of my position, education, and experience, I consider myself to be an expert in the field of masonry flashing.

4. That I am familiar with the claimed invention, namely, a combination through-wall masonry flashing / drainage device comprising a flashing membrane, the flashing membrane having a first side and a second side opposite the first side; a reinforcing cloth adhered to the flashing membrane first side; and a wicking cloth adhered to the flashing membrane second side, hereinafter referred to as FLASHVENT™.

5. That upon learning about FLASHVENT I was skeptical that it would work as claimed.

6. That I viewed a video demonstration of FLASHVENT, and was thereby sufficiently impressed by it to test it by building my own demonstration unit.

7. That I was amazed to find that I had the same results from my demonstration unit as were shown in the demonstration unit.

8. That FLASHVENT is cost competitive to other products because it does not require mortar net.

9. That FLASHVENT requires less time to install than other products, and therefore saves more money.

10. That Spino Brothers, Inc. flipped its first project in February 2007 to FLASHVENT, and have used FLASHVENT on three projects.

11. That Spino Brothers, Inc. intends to recommend and use FLASHVENT exclusively on all architect approved projects.

12. That I have no financial interest in this patent application or in the assignee York Manufacturing except as a paying customer.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

David Spino
Vice President

Date: January 29, 2008

Attorney's Docket No. YORK.US.2 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Koch, et al.	]
Serial No.:	10/710,845	] Examiner: Anthony N. Bartosik
Confirmation No.:	4844	]
Filed:	08/06/2004	] Group Art Unit: 3635
For:	COMBINATION FLASHING AND DRAINAGE SYSTEM	]

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION TRAVERSING REJECTION
37 CFR 1.132

To the Commissioner for Patents:

I, Derek Tresnak, being duly sworn, declare as follows:

1. That I am the President of Cyberdyne Masonry Corp., a commercial-industrial masonry contracting firm that has a place of business at 2808 Sun Valley Road, Lisle, IL 60532.

2. That I have been in the business of masonry contracting for 11 years, and my education, training, and experience in masonry consists of being a commercial contractor for over a decade and must evaluate products like flashings everyday. In my current position as President and CEO of Cyberdyne Masonry, I am tasked with

evaluating and choosing the best solutions for our customers. This decade of research is the basis for my claim to be an expert in this field.

3. That, on account of my position, education, and experience, I consider myself to be an expert in the field of masonry flashing.

4. That I am familiar with the claimed invention, namely, a combination through-wall masonry flashing / drainage device comprising a flashing membrane, the flashing membrane having a first side and a second side opposite the first side; a reinforcing cloth adhered to the flashing membrane first side; and a wicking cloth adhered to the flashing membrane second side, hereinafter referred to as FLASHVENT™.

5. That upon learning about FLASHVENT I was skeptical that it would work as claimed.

6. That the first project we used FLASHVENT on was the Herget Middle School in Aurora, Illinois, in March of 2004.

7. That the one-piece system was very easy to work with and reduced our installation time by 60% over the competitive products.

8. That I look forward to seeing FLASHVENT broadly specified and that I suggest it to architects at every opportunity.

9. That I have no financial interest in this patent application or in the assignee York Manufacturing except as a paying customer.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Derek Tresnak

Date: February 7, 2008